

BAIL SLIP

Appellant herein Edward Raj S/o.Maria Joseph was released on Bail by the order of this Court dated 08.04.2011 made in MP.No.1 of 2011 in Crl.RC.No.537/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

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THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Crl.R.C.No.537 of 2011

Edward Raj

...Revision Petitioner/Appellant
Accused/Appellant/

Vs

Desingu

...Respondent /Respondent/
Complainant

Criminal Revision Petition filed under Section 397 and 401 of the Cr.P.C to call for the judgment in C.A.No.98 of 2010 on the file of the Additional District and Sessions Judge (Fast Track Court No.3) Virudachalam dated 28.02.2011 confirming the order of conviction passed in S.T.C.No.392 of 2009 on the file of District Munsif cum Judicial Magistrate, Neyveli, dated 03.08.2010 and to set aside the same.

For Petitioner : Mr.M.Devaraj

For Respondent : No Appearance

O R D E R

This Criminal Revision Petition has been filed, challenging the concurrent findings of both the trial Court and lower appellate Court. The learned District Munsif cum Judicial Magistrate, Neyveli convicted the petitioner/accused under Section 138 r/w 142 of Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for another six months. Out of the fine amount, compensation of Rs.2,500/- was awarded to the complainant/respondent, under

Section 357(1) (b) of Cr.P.C. The said conviction and sentence was confirmed by the learned Additional District and Sessions Judge, (Fast Track Court No.2), Virudhachalam.

2. The brief facts set out in the petition is as follows:

2.(a) The complainant and accused are friends and that on 5.1.2009, the accused has borrowed a sum of Rs.1,75,000/- for his urgent family necessity from the complainant and issued a cheque for a sum of Rs.1,75,000/- on the same date, drawn on Karur Vysya Bank, Neyveli and when the cheque was presented for collection by the complainant in his bank on 19.1.2009, the same was dishonoured for the reason ''insufficient funds'' on 20.1.2009. Therefore, the complainant issued a legal notice to the accused on 28.1.2009 and the same was received by the accused on 20.1.2009. Since the accused after receipt of the notice, neither paid the amount nor sent any reply, the complainant has filed complaint before the learned District Munsif and Judicial Magistrate, Neyveli within the time limit prescribed under the Negotiable Instruments Act.

3. It is the case of the accused that five years back, he has borrowed a sum of Rs.20,000/- as hand loan from the complainant and the same has been returned back to him. At the time of borrowing of Rs.20,000/- he has handed over one blank cheque and the same has been misused by the complainant. The complainant filled up the cheque and presented into his bank for collection. Though the petitioner/accused denying the legal liability, the trial court as well as the appellate court rejected the defence of the accused and found him guilty under section 138 of Negotiable Instrument Act and imposed the punishment as stated above. Aggrieved over the same, the present revision has been filed by the revision petitioner, contending that there is no legally enforceable debt proved by the complainant to pass on liability under Section 138 of Negotiable Instruments Act. It is further contended by the learned counsel for the revision petitioner that initial burden on the complainant to prove the consideration has not been considered in this case by the courts below. Hence, he prayed for allowing the revision.

4. There is no appearance on behalf of the respondent. This Court perused the materials available on record. P.W.1 has stated in his chief examination that the accused borrowed a sum of Rs.1,75,000/- as loan on 05.01.2009 and issued Ex.P1, cheque on the even date, drawn on Karur Vysya Bank, Neyveli and when he presented the same for encashment, it was dishonoured. Deposit Challan marked as Ex.P.2 and Cheque Return Memo is Ex.P.3. So the complainant issued legal notice Ex.P.4 on 28.01.2009 and the same was received by the accused on 30.1.2009 as evident from Ex.P.5. From the evidence of P.W.1, issuance of the cheque

Ex.P1 by the accused, presentation the same by P.W.1 in his bank, its dishonour and issuance of the demand notice within the statutory period have been clearly established. When a cheque is issued by a person and its discharge established and the complainant reasonably discharges the burden that the cheque has been issued towards a legal debt, it is for the accused to dislodge the statutory presumption under Sections 118 and 139 of the Negotiable Instruments Act, that the cheque has not been issued towards discharge of a legal debt but was issued by way of security or any other reason or obtained unlawfully.

5. Of course, reportedly the evidence may not be a direct one, even it may be a circumstantial one or even by way of admission. Once some preponderance of probabilities brought on record by the accused, then the onus of proof shifted to the complainant. But on perusal of the entire evidence, no material was brought on record by the accused to rebut the legal presumption. It is to be noted that the Honourable Supreme Court in 2010(4) CTC 1188[Rangappa v. Sri Mohan] held that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities' and if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail.

6. But on perusal of the entire evidence, this court does not find any evidence to rebut the presumption against the complainant. Therefore, the finding of the trial court convicting revision petitioner under Section 138 r/w 142 of the Negotiable Instruments Act does not warrant any interference from this Court. However, taking into consideration of the amount involved in this case, this court is of the view that one year punishment is excessive and hence, the conviction of one year simple imprisonment is reduced to six months Simple Imprisonment. In all other aspects, the findings of the courts below are confirmed.

7. In the result, the revision petition is disposed of, modifying the sentence by reducing the same to six months simple imprisonment from one year simple imprisonment. In all other aspects the findings of the courts below are confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ggs

To

1.The Additional District and Sessions Judge
Fast Track Court No.3
Virudhachalam

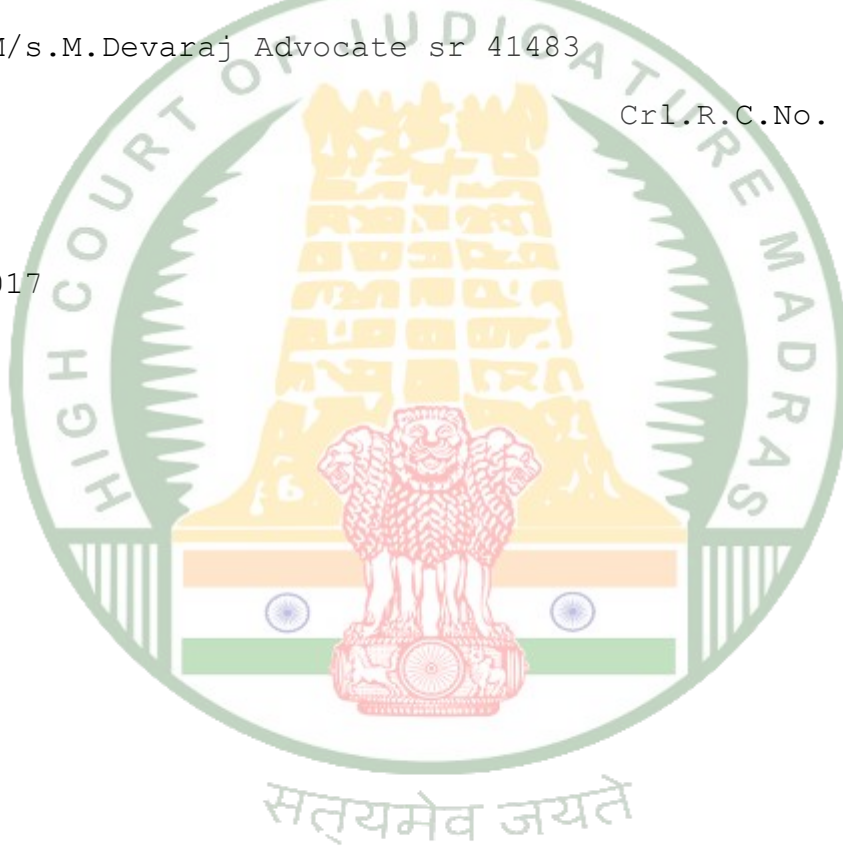
2.The District Munsif cum Judicial Magistrate
Neyveli

3.The Chief Judicial Magistrate Cuddalore

+1 cc to M/s.M.Devaraj Advocate sr 41483

CrI.R.C.No. 537 of 2011

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